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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218001
Party	Plaintiff Tod's S.p.A.
Correspondence Address	RICHARD S MANDEL COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036-6799 UNITED STATES rsm@cll.com, lmr@cll.com, rje@cll.com, njh@cll.com, trademark@cll.com
Submission	Motion to Consolidate
Filer's Name	Aryn M. Emert
Filer's e-mail	ame@cll.com, rsm@cll.com, njh@cll.com, trademark@cll.com
Signature	/Aryn M. Emert/
Date	05/27/2015
Attachments	MOTION TO CONSOLIDATE - TOMS.pdf(14736 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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TOD'S S.P.A.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91218001
MYCOSKIE, LLC,	:	
	:	
Applicant.	:	
	:	
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	:	
TOD'S S.P.A.,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	Cancellation No. 92061234
MYCOSKIE, LLC,	:	
	:	
Respondent.	:	
	:	
	:	
	:	
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**MOTION ON CONSENT TO CONSOLIDATE OPPOSITION AND CANCELLATION
PROCEEDINGS AND TO CONFORM OPPOSITION
AND CANCELLATION SCHEDULES**

Pursuant to Rule 511 of the Trademark Trial and Appeal Board Manual of Procedure and

Fed. R. Civ. P. 42(a), Tod's S.p.A. ("Opposer/Petitioner"), by and through counsel, hereby moves for an order consolidating Opposition No. 91218001 and Cancellation No. 92061234.

Opposer/Petitioner further requests that the schedule for the opposition and cancellation proceedings be conformed by adopting the dates as set in the most recently instituted of the cases being consolidated, *i.e.*, the schedule set for Cancellation No. 92061234. Counsel for Applicant/Respondent Mycoskie, LLC ("Applicant/Respondent") consents to this motion.

MEMORANDUM OF LAW

A. The Opposition and Cancellation Actions Should Be Consolidated Because They Contain Common Issues of Law and Fact

On August 25, 2014, Opposer/Petitioner filed an opposition against Applicant/Respondent's application to register the mark TOMS for goods in International Class 18, as shown in Application Serial No. 86/004,044 (Opposition No. 91218001).

Applicant/Respondent filed an answer thereto on September 30, 2014. The parties thereafter held their discovery conference, served their respective Initial Disclosures and conducted written discovery.

On April 8, 2015, Opposer/Petitioner filed a consolidated cancellation action against Applicant/Respondent's registrations for the mark TOMS for goods and services in International Classes 9, 25 and 35 as shown in Registration Nos. 4,097,948, 4,192,925, 4,313,981, and 4,410,344 (Cancellation No. 92061234). On May 18, 2015, Applicant/Respondent filed its Answer to the cancellation action.

The opposition and cancellation proceedings both involve identical parties. Both proceedings also involve common questions of fact and law for the Board to resolve, including Applicant/Respondent's right to register the mark TOMS. Opposer/Petitioner owns TOD'S-formative marks, and Opposer/Petitioner's grounds for opposition and cancellation in both

proceedings relate to those marks. Rule 511 of the Trademark Trial and Appeal Board Manual of Procedure provides that “[w]hen cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases.” See also Fed. R. Civ. P. 42(a); World Hockey Ass’n v. Tudor Metal Prods. Corp., 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975) (ordering consolidation of two opposition proceedings because it was “equally advantageous to both parties in the avoidance of the duplication of effort, loss of time, and extra expense involved in conducting the proceedings alternately”).

In addition, counsel for Applicant/Respondent, Louis S. Ederer, Esq., consented to the consolidation in an e-mail to Opposer/Petitioner’s counsel on May 22, 2015.

B. Discovery And Trial Periods Should Be Conformed

Opposer/Petitioner, with Applicant/Respondent’s consent, further requests that the schedule for the opposition and cancellation proceedings be conformed by adopting the dates as set in the most recently instituted of the cases being consolidated, *i.e.*, the schedule set for Cancellation No. 92061234, as set forth below:

Deadline for Discovery Conference¹: 6/18/2015
Discovery Opens 6/18/2015
Initial Disclosures Due 7/18/2015
Expert Disclosures Due 11/15/2015
Discovery Closes 12/15/2015
Plaintiff's Pretrial Disclosures 1/29/2016
Plaintiff's 30-day Trial Period Ends 3/14/2016
Defendant's Pretrial Disclosures 3/29/2016
Defendant's 30-day Trial Period Ends 5/13/2016
Plaintiff's Rebuttal Disclosures 5/28/2016
Plaintiff's 15-day Rebuttal Period Ends 6/27/2016

¹ Discovery conference and initial disclosure deadlines apply to Cancellation No. 92061234. (In Opposition No. 91218001, the parties have held their discovery conference and served Initial Disclosures.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached *Motion on Consent To Consolidate Opposition And Cancellation Proceedings And To Conform Opposition And Cancellation Schedules* was served upon Applicant/Respondent by mailing a copy thereof by first class mail, postage prepaid, on Applicant/Respondent's counsel of record on May 27, 2015 addressed as follows:

Louis S. Ederer, Esq.
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022

Louis S. Ederer, Esq.
Arnold & Porter LLP
399 Park Ave
New York, NY 90066

/Aryn M. Emert/
Aryn M. Emert